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No. 84-754

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CITICORP,

Petitioner,

v.

THE BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF OF RESPONDENT BANK OF BOSTON CORPORATION IN OPPOSITION TO PETITION

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16 pp

QUESTIONS PRESENTED

In this case, petitioner Citicorp seeks review of the same questions that it already has presented to this Court in its pending petition for a writ of certiorari in *Northeast Bancorp, Inc.* v. *Board of Governors,* No. 84-363 (filed Sept. 6, 1984) ("*Northeast*"). This case involves two state statutes enacted pursuant to the plenary authority over interstate bank holding company acquisitions granted to the states in the Douglas Amendment to the Bank Holding Company Act—namely, the same Massachusetts statute that is at issue in the *Northeast* case, as well as a Rhode Island statute that removes the Douglas Amendment's general prohibition with respect to interstate bank holding company acquisitions on a regional basis for a two-year transition period and thereafter permits nationwide interstate acquisitions of Rhode Island banks where reciprocity exists. Citicorp's present challenges to these state statutes arise in the same context as the challenges raised in its *Northeast* petition (see BBC *Northeast* Opp. at i),* and thus, as in *Northeast,* the questions presented are:

1. Do the Massachusetts and Rhode Island statutes exceed the scope of authority conferred upon the states in the Douglas Amendment, which was enacted principally to enable the states to determine, in accordance with their own policies, the degree to which interstate bank holding company acquisitions of their local banks should be permitted and which reflects no congressional intent to limit this state authority?

2. Do the Massachusetts and Rhode Island statutes, which were enacted pursuant to the plenary authority granted to the states by Congress in the Douglas Amendment and which serve only to permit a form of interstate commerce that otherwise would be federally prohibited, constitute impermissible restrictions on interstate commerce that violate the Commerce Clause?

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* Cites to "BBC *Northeast* Opp. at _____" are to respondent Bank of Boston Corporation's brief in opposition to the petition in the *Northeast* case.

3. Do the Massachusetts and Rhode Island statutes, which represent nothing more than an exercise of authority that Congress conferred on the states in the Douglas Amendment and which neither create any new level of sovereignty nor in any way restrict federal authority, constitute improper state encroachment upon the federal structure that violates the Compact Clause?

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BRIEF OF RESPONDENT BANK OF BOSTON CORPORATION IN OPPOSITION TO PETITION

Respondent Bank of Boston Corporation ("BBC"), which was an intervenor in the court below, submits this brief in opposition to the petition for certiorari filed by Citicorp.[1]

STATEMENT OF THE CASE [2]

a. Relevant Statutes

This case involves yet another challenge by Citicorp to state statutes enacted pursuant to the plenary authority over interstate bank holding company acquisitions conferred on the states in the Douglas Amendment to the Bank Holding

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[1] The listing required for Bank of Boston Corporation by Rule 28.1 appears in Appendix A to this brief.

[2] Cites to "A ____" are to the Appendix to Citicorp's present petition; cites to "NA ____" are to the Appendix to the petition in *Northeast.*

Company Act of 1956.[3] As respondent previously has detailed (BBC *Northeast* Opp. at 2-3), Congress in the Douglas Amendment established a general *federal* prohibition on interstate bank holding company acquisitions. However, in the same Amendment, Congress also expressly provided that the states may authorize acquisition of their local banks by out-of-state holding companies and thus remove the general federal prohibition on such interstate acquisitions to the degree they choose.[4]

Since 1956, the states have enacted a variety of different statutes in exercise of the authority conferred in the Douglas Amendment, typically lifting the general federal prohibition to only a limited extent (see BBC *Northeast* Opp. at 15-16). Massachusetts has enacted one such statute, authorizing acquisition of banks located within its borders by bank holding companies based in other New England states if the acquiring holding company's home state affords comparable acquisition opportunities to Massachusetts banking organizations.[5]

Rhode Island also has enacted legislation authorizing acquisition of its local banks by out-of-state bank holding companies.[6] For an initial two-year period, the Rhode Island Act—like the Massachusetts Act—provides authority for the acquisition of Rhode Island banks only by bank holding companies based in other New England states that allow acquisition of their banks by Rhode Island banking organizations.[7] Commencing July 1, 1986, the Rhode Island Act permits any out-of-state bank holding company, regardless of its location, to acquire Rhode Island banks so long as Rhode Island banking organizations are afforded comparable acquisition opportunities in the holding company's home state.[8]

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[3] 12 U.S.C. § 1842(d) (NA96).

[4] *Id.*

[5] Mass. Gen. L. Ann. ch. 167A § 2 ("The Massachusetts Act") (NA101-02).

[6] R.I. Gen Laws §§ 19-30-1, 19-30-2 ("The Rhode Island Act") (NA103-06).

[7] *Id.*, § 19-30-1(a).

[8] *Id.* Elsewhere in New England, Connecticut has enacted a statute similar to the Massachusetts Act that permits acquisition of Connecticut banks by bank holding companies based in other New England states that afford

(footnote continues)

As also is true of the Massachusetts Act (see BBC *Northeast* Opp. at 3-4), the Rhode Island Act is the result of independent action by the State's legislature. Rhode Island was under no obligation to pass the statute; it made no agreement with any other state in doing so; and it remains free to repeal or alter the statute whenever it wishes (NA 103-06).

b. Prior Transactions and Decisions

Pursuant to the Massachusetts Act and the similar Connecticut Act (see n. 8, above), the Federal Reserve Board previously has approved three interstate acquisitions involving Massachusetts and Connecticut banking organizations.[9] In each of these cases, the Board was presented with the same Commerce Clause and Compact Clause challenges that Citicorp raises in its present petition. After thoroughly considering these challenges, the Board approved each of the acquisitions in light of the authority conferred on the states in the Douglas Amendment (see BBC *Northeast* Opp. at 4-6).

Citicorp sought review of the Board's approval orders in the United States Court of Appeals for the Second Circuit, and in a consolidated decision the Court of Appeals affirmed.[10] The Second Circuit expressly rejected Citicorp's claim that the states

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(footnote continued)

reciprocal treatment to Connecticut holding companies. Conn. Act No. 83-411, § 2 (1983) (NA99). (This Connecticut statute—as well as the Massachusetts Act—are at issue in the *Northeast* case.) Maine has authorized essentially unrestricted acquisition of its local banks by out-of-state holding companies. Me. Rev. Stat. Ann. tit. 9, § 1013 (Supp. 1984). New Hampshire and Vermont have not enacted any legislation removing the Douglas Amendment's general prohibition on interstate acquisitions of their local banks.

[9] The transactions are: the merger of Bank of New England Corporation, a Massachusetts bank holding company, and CBT Corporation, a Connecticut bank holding company; the acquisition of Arltru Bancorporation, a Massachusetts bank holding company, by Hartford National Corporation, a Connecticut bank holding company; and the acquisition of Colonial Bancorp, Inc., another Connecticut bank holding company, by BBC, a Massachusetts bank holding company.

[10] See *Northeast Bancorp, Inc.* v. *Board of Governors*, 740 F.2d 203 (2d Cir. 1984) (NA21-33).

have only limited authority to remove the Douglas Amendment's general prohibition on interstate bank holding company acquisitions (NA29). Given the states' plenary authority over interstate acquisitions under the Amendment, the court found, based on this Court's established precedents, that the Massachusetts Act and the similar Connecticut statute are " 'invulnerable' " to the Commerce Clause challenge raised by Citicorp (NA30). And the Court similarly found that the Massachusetts Act and the Connecticut statute involve no conceivable encroachment upon the " 'supremacy of the United States' " that might violate the Compact Clause (NA31-32).

c. Present Transaction and Decisions

Relying on the authority provided by the Massachusetts and Rhode Island Acts, respondent BBC, which is based in Massachusetts, sought Federal Reserve Board approval in April 1984 to acquire RIHT Financial Corporation, a Rhode Island-based bank holding company. Citicorp objected to this acquisition—as it had objected to the acquisitions at issue in *Northeast*—on the ground that the Massachusetts and Rhode Island Acts violate the Commerce Clause and Compact Clause. The Board approved the BBC/RIHT transaction, rejecting Citicorp's constitutional challenges in light of the Second Circuit's *Northeast* decision and its own "detailed analysis" in the prior orders affirmed by that decision (A14-A15; see BBC *Northeast* Opp. at 5).

Citicorp petitioned for review of the BBC/RIHT order in the Second Circuit. Based on a stipulation of the parties, the Second Circuit affirmed the order in light of its *Northeast* decision (A1-A3).[11]

[11] Citicorp's present petition also seeks review of a Second Circuit order affirming Board orders approving Fleet Financial Group, Inc.'s acquisition of newly established banks in Connecticut and Massachusetts. BBC is not a party to those acquisitions or orders.

REASONS FOR DENYING THE WRIT

In this case, Citicorp seeks review of precisely the same questions that it already has presented to the Court in its pending petition for certiorari in the *Northeast* case. Respondent BBC's brief in opposition in *Northeast* fully demonstrates the absence of any merit in Citicorp's current petition.

Thus, Citicorp baldly asserts in its petition (at 8-9) that the Second Circuit's decision conflicts with past decisions of this Court. In fact, however, the decision below in this case—like the decision in *Northeast*—is *supported by* every pertinent prior decision of this Court as well as of the lower federal courts and the Federal Reserve Board (see BBC *Northeast* Opp. at 14-19).

As the Solicitor General has emphasized in opposing the petition in *Northeast,* the questions presented by Citicorp are not of constitutional magnitude; rather, "at bottom, this case presents only a relatively straightforward question of statutory interpretation" with respect to the meaning of the Douglas Amendment.[12] In this regard, when the Douglas Amendment's unambiguous language and history are fully considered, it is quite clear that Congress in the Amendment purposefully put aside our general federal model of a unified national market and erected a general *federal* barrier to out-of-state bank holding company acquisitions of local banks (see BBC *Northeast* Opp. at 9-10). Congress thus terminated all interstate commerce in bank holding company acquisitions *as a matter of federal law.* At the same time, however, Congress was intent that the states should have full authority to permit the acquisition of their local banks by out-of-state bank holding companies, if they so choose, in accordance with their own local policies. Congress therefore also expressly granted to the states in the Douglas Amendment, without limitation, authority to remove the general federal prohibition on interstate acquisitions to the degree they deem appropriate (see BBC *Northeast* Opp. at 10-14).

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[12] Brief for the Federal Respondent in Opposition at 14, in *Northeast Bancorp, Inc.* v. *Board of Governors of the Federal Reserve System* (No. 84-363).

To support its claim that the Douglas Amendment provides no authority for the challenged state statutes, Citicorp now relies heavily (Pet. 10-11) on comments by a single Congressman regarding a recent proposal to revise the Amendment. This Court has repeatedly recognized, however, that the views of a subsequent Congress—much less a single Congressman—are not probative as to the intent of a different Congress in legislation enacted years earlier.[13] Here, of course, the essential issue is the intent of the Congress that passed the Douglas Amendment in 1956, and nowhere has Citicorp cited even a single suggestion that that Congress intended any limitation whatever of the Amendment's otherwise unrestricted grant of authority to the states (cf. BBC *Northeast* Opp. at 13, 21-22).

In light of the states' plenary authority under the Douglas Amendment, the Massachusetts and Rhode Island Acts plainly present no material question under either the Commerce Clause or the Compact Clause (see BBC *Northeast* Opp. at 19-27). Both the Massachusetts Act and the Rhode Island Act involve nothing more than a legitimate exercise of the authority "granted to the States" in the Douglas Amendment "to create exceptions to [the] general prohibition" on interstate acquisitions.[14]

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[13] *E.g., United States* v. *United Mine Workers*, 330 U.S. 258, 282 (1947) ("We fail to see how the remarks of . . . Senators in 1943 can serve to change the legislative intent of Congress expressed in 1932 . . . ."); *accord, United States* v. *Price*, 361 U.S. 304, 313 (1960); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 117-18 (1980).

What is more, Citicorp simply disregards that the Senate, in considering the legislative proposal upon which the Congressman commented, specifically expressed its belief that "the state statutes concerning interstate banking [such as the Massachusetts and Rhode Island Acts] are consistent with both the constitution and the federal banking statutes . . .," S. Rep. No. 560, 98th Cong., 1st Sess. 49 (1984), and made clear that it did not intend to "suggest an opinion limiting the scope of authority conferred on the States in the original Douglas amendment nearly 30 years ago," 130 Cong. Rec. S. 11153 (daily ed. Sept. 13, 1984) (remarks of Senators Garn and Tsongas).

[14] *Cf. Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 47 (1980).

CONCLUSION

For the reasons stated in this brief and in BBC's brief in opposition to the petition in *Northeast*, the petition for a writ of certiorari should be denied.[15]

Respectfully submitted,

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[15] However, if the *Northeast* petition should be granted, respondent suggests that the Court withhold action on this petition until it has disposed finally of the *Northeast* case.

APPENDIX A

APPENDIX A

1. Bank of Boston Corporation has no parent company.

2. Bank of Boston Corporation's partially owned subsidiaries and affiliates are as follows:

Alex Lawrie Computer Services Ltd.
Alex Lawrie Factors Ltd.
Alex Lawrie Receivables Financing Ltd.
Asesores Technico Administrativo, S.A. (Guatemala)
Banco de Boston Dominicano, S.A. (Dominican Republic)
Banco Del Ejercito, S.A. (Guatemala)
Banco Industrial S.A. (Guatemala)
Banco Latinoamericano de Exportaciones, S.A. (Panama)
Banco Latinoamericano de Exportaciones, S.A.
Big Canoe Corporation
Boston Bank Cameroon
Boston Industrial Lease (Queensland)
Boston Industrial Lease (S.A.)
Boston Leasing Limited
Boston Personal Reserve Insurance Company (Channel Islands)
Centrale de Livraison de Valeurs Mobilieres (Cedel S.A.) (Luxembourg)
Compania de Credito, S.A. (Honduras)
Confidential Invoice Discounting Limited
Confidential Invoice Factors Limited
Consolidated Leasing (Queensland)
Equila Particpacoese Empreendimento (Brazil)
Erato Transportation Inc. (Panama)
Euphrosyne Oceanic Transport S.A. (Panama)
Exteleasing, S.A. (Spain)
Factors A.G. (Switzerland)
First Leasing and Finance Ltd. (Australia)
First Leisure Corporation (United Kingdom)

Fundacion Dominicano de Desarollo (Dominican Republic)

IBJ Leasing Company, Ltd. (Japan)

Independent Factors Limited

Industrial Credit and Investment Corporation of India Ltd.

International Factors (Belgium)

International Factors Denmark A.S.

International Factors Espanola S.A. (Spain)

International Factors Group Holding S.A. (Luxembourg)

International Factors Ltd. (United Kingdom)

International Factors (Portugal) S.A.R.L.

International Lawrie Factors Holding, Ltd.

Inversiones Teatrales, S.A. (Honduras)

Nigerian American Merchant Bank Ltd.

Orient Factors (Hong Kong) Ltd.

Orient Factors Ltd. (Japan)

Pacific Lease (Hong Kong) Ltd.

Pacific Lease (Latin America) S.A. (Panama)

PLC Overseas Limited (Bermuda)

P.M.H. Boston (Brazil)

Primavera Country Club (Dominican Republic)

Private Development Corporation of the Philippines

Quissett Corporation

S.A. International Factors (Belgium)

Santo Domingo Tennis Club (Dominican Republic)

Servicios Comerciales e Industriales S.A. (Guatemala)

Societe Francaise de Factoring/International Factors France (France)

Sodril, S.A. (Brazil)

Sodril S.A. Correctora de Titulos e Valores (Brazil)

Tarjetas de Credito de el Salvador S.A.

Tarjetas de Credito de Guatemala S.A. (Guatemala)

Xenotron Limited (United Kingdom)